UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BRIAN JENKINS,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 3:99CV2371 (CFD)
	:	
AREA COOPERATIVE EDUCATION	:	
SERVICES, ET AL.,	:	
Defendants.	:	

RULING ON MOTION FOR RECONSIDERATION

Pending is the defendants' Motion for Reconsideration [Doc. # 52]. The motion for Reconsideration is GRANTED. After reconsideration, the Court's Ruling on Defendants' Renewed Motion for Summary Judgment [Doc. # 49], dated March 10, 2003 ("Ruling")[1], is modified, in part, as follows:

The defendants object to part IV of the Ruling in which the Court declined to exercise supplemental jurisdiction over the state law claims in counts three, four, and five of the complaint after having dismissed all the counts (one and two) over which it had original jurisdiction. See Ruling [Doc. # 49], at 24. The defendants claim that the Court should have ruled that the remaining state law claims in counts three, four, and five are preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. For the following reasons, the Court agrees.

A. LMRA Preemption

[1]Familiarity with the Court's Ruling is assumed. See Jenkins v. Area Cooperative Educ. Servs., 248 F. Supp. 2d 117, (D.Conn. 2003).

"Section 301 of the LMRA confers subject matter jurisdiction over suits alleging violations of the collective bargaining agreement. . . . In enacting § 301, Congress intended that uniform federal labor law would prevail over inconsistent, state specific rules." Wilhelm v. Sunrise Northeast, Inc., 923 F. Supp. 330, 334 (D. Conn. 1995). Thus, "[w]hen resolution of a state-law claim depends upon interpretation of a collective bargaining agreement, the claim must either be treated as a § 301 claim or dismissed as pre-empted by federal-labor contract law." Id. (citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 221 (1984)). Section 301 preemption extends to state law tort claims as well as contract claims. See Baker v. Farmers Elec. Co-op., Inc., 34 F.3d 274, 279 (5th Cir. 1994) ("In [Allis-Chalmers Corp. v.] Lueck [471 U.S. 202, 208 (1985)], the Supreme Court recognized that the coverage of section 301 extends beyond contract claims for breach of a labor agreement to include state tort claims which require analysis of a labor contract"). Wilhelm, 923 F.Sup. at 334 ("If resolution of the plaintiff's claim hinges on the court's interpretation of the collective bargaining agreement, the claim is preempted regardless of whether it sounds in contract or tort."). "However, if a state-law claim can be resolved without interpreting a collective bargaining agreement, section 301 does not preempt the claim." Carvalho v. International Bridge & Iron Co., No. 3:99CV605 (CFD), 2000 WL 306456, at *2 (Feb. 25, 2000 D. Conn.). Thus, "[t]o determine whether [Jenkins's] claims are preempted by section 301, the Court must examine whether the claims are independent of any rights established by the collective bargaining agreement or whether the claims are intertwined with the terms of the collective bargaining agreement." Id.

Count five of the complaint asserts a claim of intentional infliction of emotional distress based on the defendants' actions in terminating Jenkins.

> Whether a claim for intentional infliction of emotional distress is preempted under section 301 of the LMRA depends upon an examination of the alleged facts underlying the plaintiff's claim. . . .
>
> If the conduct is alleged to have occurred during the course of the termination process, as part of appropriate employee discipline, or in connection with the grievance or arbitration proceedings concerning the employee, the claim is preempted because resolution of the claim would require the Court to evaluate the conduct of the employer in light of the terms of the CBA. See Kellman v. Yale-New Haven Hosp., 64 F. Supp. 2d 35, 36-37 (D. Conn. 1999) (employee's claim for intentional infliction of emotional distress based on his termination preempted); Ellis v. Lloyd, 838 F.Supp. at 707-08 (intentional infliction of emotional distress claim preempted when based upon employment grievances filed against the plaintiff); Anderson v. Coca Cola Bottling Co., 772 F.Supp. 77, 82 (D.Conn.1991) (employee's claim for intentional infliction of emotional distress based on issuance of written warnings by his supervisor preempted); Petrucelli v. Cytec Industries, Inc., Civ. No. 3:95CV1055(AHN), 1996WL684401, at *5 (D.Conn. May 23, 1996) (employee's claim for intentional infliction of emotional distress based on circumstances surrounding his promotions, layoffs, and grievances/arbitrations preempted).
>
> If, however, the conduct is alleged to have occurred in a setting unrelated to the termination process, as part of appropriate employee discipline, or during grievance or arbitration proceedings, the claim is not preempted by section 301 of the LMRA. See Vorvis v. Southern New England Telephone Co., 821 F.Supp. 851, 853-55 (D.Conn.1993) (employee's intentional infliction of emotional distress claim not preempted where supervisor mistreated the plaintiff through verbal abuse, false statements about her job performance and unfair discipline); Claps v. Moliterno Stone Sales, Inc., 819 F.Supp. 141, 154 (D.Conn.1993) (employee's intentional infliction of emotional distress claim not preempted where supervisor and superintendent engaged in a series of demeaning and abusive practices); Brandmeyer v. Brescome Barton, Inc., No. C 980148932, 1999WL391097, at *4 (Conn.Super.Ct. June 1, 1999) (intentional infliction of emotional distress claim based upon abusive practices of supervisors and unfair discipline not preempted).

Carvalho, 2000 WL 306456, at *9. Here, it is undisputed that the conduct that forms the basis for the allegations in count five occurred during the course of either the termination of Jenkins or during regular employment evaluations of him by Saloom. Although paragraphs 16 and 17 of count five could be interpreted to allege some conduct by Saloom which was not in the context of usual employment reviews and actions, the evidence presented by Jenkins does not raise a genuine issue of material fact

whether those actions were outside of such usual personnel discipline; thus, consideration of the terms of the collective bargaining agreement would be necessary. As to the allegations of paragraphs 18 and 19 of count five, which allege race discrimination, the Court's previous decision found no genuine issue of material fact relating to whether Jenkins was discriminated against on the basis of his race, and Jenkins has not submitted any further evidence in support of that claim.

Accordingly, count five is preempted by Section 301 of the LMRA.

Count four of the complaint alleges that the defendants violated the implied covenant of good faith and fair dealing by the manner in which they terminated Jenkins. However, where a plaintiff's employment is subject to a collective bargaining agreement, § 301 usually preempts a claim of breach of the obligation of good faith and fair dealing arising out of a termination because it would require interpretation of the terms of the collective bargaining agreement.. See Carvalho, 2000 WL 306456, at *7 ("[S]ection 301 of the LMRA preempts claims for breach of the implied covenant of good faith and fair dealing where the plaintiff's employment is governed by a collective bargaining agreement."); Anderson v. Coca-Cola Bottling Co., 772 F. Supp. 77, 82 (D. Conn. 1991) (same). Here, as there is no dispute that Jenkins was subject to a collective bargaining agreement, this claim is also preempted by Section 301 of the LMRA because resolution of that claim would necessarily depend upon the terms of his collective bargaining agreement.

Count three of the complaint asserts a claim of negligent infliction of emotional distress. In Dulay v. United Technologies Corp., No. 3:93-CV-2020(JAC), 1994 WL 362149, at *3 (D.Conn. June 10, 1994), then District Judge Cabranes held that certain state law claims for "unintentional" infliction of emotional distress may not be preempted by § 301:

> [A] claim for unintentional infliction of emotional distress does not require the court to determine whether the defendant's conduct exceeded the bounds of the collective bargaining agreement.... Rather, the court must determine whether the defendant's conduct involved an unreasonable risk of causing the plaintiff emotional distress. Because this determination does not require the court to determine whether the plaintiff's discharge was permissible under the collective bargaining agreement, claims for unintentional infliction of emotional distress arising from the defendant's decision to terminate the plaintiff's employment are not preempted by Section 301.

Dulay, 1994 WL 362149, at *3.

Other courts have recognized that whether a claim of negligent infliction of emotional distress is preempted by § 301 turns on the nature of the facts underlying the claim:

> Other cases dealing with this type of tort involve claims of intentional or negligent infliction of emotional distress associated with discharge from employment. In Neberry v. Pacific Racing Ass'n., 854 F.2d 1142 (C.A.9, 1988), such a claim was dismissed where the plaintiff alleged a cursory investigation by management into racetrack operations led it to improperly accuse him of theft and fire him. The court in holding the tort claim was preempted said that, "*From these allegations it is clear that Newberry's emotional distress claim arises out of her discharge* and the defendant's conduct in the investigation leading up to it," thus the court went on to say it would be necessary for it to decide "whether her discharge was justified under the terms of the collective bargaining agreement." Id., 1149.

Bimler v. Stop & Shop Supermarket Co., 34 Conn. L. Rptr. 112, 2003 WL 356711, at * 8 (Jan. 22, 2003 Conn. Super.) (emphasis added). Here, based on the allegations asserted in count three of the complaint, and the undisputed evidence, it is clear that Jenkins's negligent infliction of emotional distress claim "arises out of his discharge" and out of regular employment evaluations and discipline.[2]

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[2]Moreover, even if the Court were to hold that the claim here for negligent infliction of emotional distress was not preempted by § 301, the claim would fail as a matter of law. The Connecticut Supreme Court has held that "negligent infliction of emotional distress in the employment context arises only where it is based upon unreasonable conduct of the defendant in the termination process." Perodeau v. City of Hartford, 259 Conn. 729, 750 (Conn. 2002) (citing Parsons v. United Technologies Corp., 243 Conn. 66, 88 (1997) (internal quotation marks omitted)). Here, the allegations of count three and the undisputed evidence relevant to that count do not show that there was

Therefore, because a resolution of this claim would require the Court to consider whether the conduct alleged was permitted under the terms of the collected bargaining agreement, it is preempted by § 301.

Conclusion

For the preceding reasons, the motion for reconsideration is GRANTED and the Court's Ruling of March 10, 2003 is modified as follows: summary judgment is GRANTED in favor of the defendants as to counts three, four, and five of the complaint.

SO ORDERED this ____ day of February 2004, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

any "unreasonable conduct" in the manner of Jenkins's termination. Although paragraph 17 of count three alleges that Saloom threatened retaliation against other employees who supported Jenkins "during the termination of the plaintiff's employment," Perodeau makes clear that the cause of action for negligent infliction of emotional distress in the employment context is only available for conduct that occurs during the termination process and not during the employment that preceded it. Jenkins has presented no evidence that raises a genuine issue of material fact that such conduct occurred during the process of his termination.